

United States Bankruptcy Court
WESTERN DISTRICT OF MICHIGAN

In the Matter of:

Modern Plastics Corporation,

Debtor.

Case No.: 09-00651

Chapter 7 / Filed: January 26, 2009

Honorable Scott W. Dales

MOTION FOR RELIEF FROM AUTOMATIC STAY IN FAVOR OF
BERRIEN COUNTY TREASURER

The Berrien County Treasurer (hereinafter, "Berrien County"), by and through his attorneys, Kreis, Enderle, Hudgins & Borsos, P.C., state the following for his Motion for Relief from Automatic Stay:

1. The Debtor filed a Chapter 7 bankruptcy petition on January 26, 2009.
2. Berrien County Treasurer is a statutory elected official of Berrien County, Michigan (the "County") and the tax collecting governmental unit for Berrien County, Michigan, whose duties include the collection of delinquent property taxes on both real and personal property for the County and various local municipalities within the County, such as the City of Benton Harbor. Berrien County maintains an office at 701 Main Street in St. Joseph, Michigan 49085.
3. Berrien County is a secured creditor of Debtor, pursuant to MCL 211.40, with a first priority secured interest in certain real property for the collection of real property taxes, consisting of several parcels of real property commonly referred to as 489 North Shore Drive in Benton Harbor, Michigan 49022 (hereinafter the "Property"), and containing the real property encompassed in the following tax identification numbers:

Tax ID No.: 11-54-0018-0021-02-9

Tax ID No.: 11-54-0018-0021-01-1

Tax ID No.: 11-54-0018-0025-00-8

Tax ID No.: 11-54-0018-0025-02-4

Tax ID No.: 11-54-0018-0025-01-6

Tax ID No.: 11-54-0018-0025-03-2

Tax ID No.: 11-54-0018-0024-00-1

See Parcel Map attached hereto as **Exhibit A**.

4. More than four (4) years have passed since the filing of the Chapter 7 bankruptcy and the Debtor has not made any adequate protection payments to Berrien County. Additionally, the Trustee has not effectuated any sale of the Property and the pending Motion to Approve Option to Purchase Real Estate (489 North Shore Dr., Benton Harbor, Michigan 49022) [DN 106], according to conversations with the Trustee, is unlikely to be consummated.

5. The balance due (as of March 11, 2013) for real property taxes owed on the Property as shown on the Delinquent Tax Inquiries was \$307,182.36 and continues to rise with new tax years, taxes being assessed and interest accruing at the rate of one percent (1%) per month plus administration fees. See Delinquent Tax Inquiries attached hereto as **Exhibit B**.

6. Bank of America, NA, successor by merger to LaSalle Bank National Association (hereinafter "Bank of America") is a secured creditor of Debtor with a junior priority secured interest in the Property in the amount of \$1,275,912.01 pursuant to the Proof of Claim filed on May 20, 2009 [Claim # 12-1].

7. The value of the Property pursuant to Debtors Schedule A is \$1,000,000.00; therefore, the Debtor (and the estate) have no equity in the Property.

8. In addition, the Property may have environmental issues that are not accounted for in the Property valuation in the Debtor's Schedules which will significantly reduce its value.

9. The Property is not necessary for an effective reorganization.

10. Just cause exists for the modifying the automatic stay pursuant to 11 U.S.C.

§362(d) for the purpose of permitting Berrien County to foreclose the taxes and sell the Property at foreclosure sale as permitted under state law.

WHEREFORE, the Berrien County Treasurer hereby respectfully requests:

A. Relief from the automatic stay regarding Berrien County's interest in the Property to permit his to assert his State Law remedies against the Property, including, but not limited to, proceeding with tax foreclosure, to foreclose upon and extinguish any junior interest in the Property and to sell the Property at tax sale.

B. Such further relief as the Court deems just and equitable.

Dated: April 4, 2013

Respectfully submitted,

BUSINESS ADDRESS:

One Moorsbridge, PO Box 4010
Kalamazoo, Michigan 49003-4010
Phone: (269) 324-3000
E-Mail: tking@kreisenderle.com

KREIS, ENDERLE, HUDGINS & BORSOS, P.C.

By: /s/ **Thomas G. King**

Thomas G. King
Attorney for Berrien County Treasurer